

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220074 **DATE:** October 2, 1985
MATTER OF: Ideamatics, Inc.

DIGEST:

1. Protest against the cancellation of an original solicitation is untimely and will not be considered on the merits when it is filed 5 months after the cancellation, in the context of a protest against award under a resolicitation.
2. Whether a proposed subcontractor has violated a contractual relationship with a protester is a dispute between private parties and is thus beyond the scope of the bid protest function.
3. Allegation that agency has interfered with the protester's contractual relations by sending a copy of a solicitation directly to the protester's subcontractor under an earlier solicitation is without merit, since subcontractor apparently requested solicitation and agency is required to obtain full and open competition in procurements.
4. Argument that protester was eliminated from competition only 2 weeks after its proposal was submitted does not demonstrate that the possible selection for award of its proposed subcontractor under an earlier solicitation is due to favoritism on the part of the agency.
5. When protest is dismissed as without legal merit, no useful purpose would be served by holding a bid protest conference, and request for proposal preparation costs and attorney's fees will be denied.

Ideamatics, Inc. protests any award to the Department of Civil Engineering, University of Texas at Austin, under request for proposals (RFP) No. HC-14362, issued by the

033352

Department of Housing and Urban Development (HUD),
Washington, D.C.

HUD issued the RFP on July 23, 1985, soliciting offers for ad hoc enforcement testing for its Manufactured Housing Program. Ideamatics argues, in effect, that it should be given the award and that the University of Texas should be allowed to participate in this testing program as an Ideamatics subcontractor or not at all.

We dismiss the protest.

HUD originally tried to satisfy this testing requirement in October 1984 when it issued RFP No. HC-12839. However, it only received one offer, and this was from Ideamatics. Ultimately, the agency decided that RFP-12839 did not meet its needs, and on April 16, 1985, it canceled the solicitation. When it notified Ideamatics of the cancellation, HUD also informed the protester that it would be issuing another solicitation in the near future.

In developing its proposal for the original RFP, Ideamatics states, it had contacted the Department of Civil Engineering at the University of Texas to see whether the University wanted to help Ideamatics prepare its proposal and act as a subcontractor if Ideamatics received the award. The University agreed to participate, apparently entered into a "teaming agreement" with Ideamatics, and provided the protester with certain information needed to prepare the proposal.

After the cancellation and resolicitation under RFP-14362, Ideamatics states, it attempted to renew its earlier arrangement with the University, but learned that the school was no longer interested in working with Ideamatics. HUD had sent a copy of the solicitation directly to the University, apparently upon request, and the school had decided that it would either submit a proposal on its own or work with some other contractor. Ideamatics subsequently arranged to have the University of Maryland act as its subcontractor. However, just 2 weeks after Ideamatics submitted its proposal in response to the resolicitation, HUD notified the company that it was not in line for the award. Ideamatics then filed this protest.

The grounds of Ideamatics' protest can be summarized as follows:

- (1) HUD never adequately explained why Ideamatics was not awarded a contract under the original solicitation, RFP-12839;

(2) The University's decision to act on its own violates its contractual relationship with Ideamatics;

(3) HUD intentionally interfered with Ideamatics' contractual relationship when it solicited the University under RFP-14362;

(4) HUD's hasty rejection of Ideamatics' proposal under RFP-14362 indicates a biased, improper evaluation with the objective of directing the contract award to the University; and

(5) Pending award, the agency has arranged on a noncompetitive basis for the University to perform a portion of the testing as a subcontractor to another HUD contractor for the Manufactured Housing Program.

Ideamatics requests that we recommend termination of any contract already awarded, direct either award to Ideamatics or the issuance of a new solicitation, and order that Ideamatics be reimbursed for its costs of pursuing the protest as well as for its attorney's fees.

Our Bid Protest Regulations provide that, as a general rule, protests must be filed in our Office not later than 10 working days after the basis of the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1985). If Ideamatics believed that the cancellation of RFP-12839 was somehow improper, it should have filed a protest with our Office not later than the 10th working day after it learned of the cancellation, specifying its reasons for opposing the agency's action. In fact, Ideamatics did not complain about the cancellation until almost 5 months after it had occurred. Clearly, then, this ground for protest is untimely and cannot be considered on the merits.

Regarding the University's alleged violation of a contractual relationship, Ideamatics has not produced any evidence that its "teaming agreement" with the University survived the cancellation of RFP-12839. It appears that this agreement was for a limited purpose--that is, preparing the proposal and, if successful, entering into a more permanent prime contractor/subcontractor relationship--and was also dependent upon the continued viability of RFP-12839. If there is an existing contractual relationship, the protester has not shown that

it includes any agreement by the University not to compete with Ideamatics for future government contracts. In any event, we will not consider a breach of contract allegation because that is essentially a dispute between private parties and as such is beyond the scope of our bid protest function. See, for example, Morse Typewriter Co., Inc., B-212636.2, Sept. 27, 1983, 83-2 CPD ¶ 383.

We also see no valid ground of protest in Ideamatics' allegation that HUD intentionally interfered with its contractual relationship with the University. As mentioned above, the protester has not shown that its agreement with the University was as extensive as it has implied, and we know of no statute or regulation that requires an agency to investigate the extent and nature of a potential contractor's business relations with all other potential contractors before it sends that contractor a copy of the solicitation. Therefore, we fail to see how HUD's sending a copy of RFP-14362 directly to the University rises to the level of interference with Ideamatics' contractual relations.

More importantly, contracting agencies are required to obtain full and open competition in their procurements, which means that all responsible sources are permitted to submit sealed bids or competitive proposals. See 41 U.S.C. §§ 253 and 403 (West Supp. 1985), as amended by the Competition in Contracting Act of 1984, Pub. L. 98-369, title VII. HUD's provision of a copy of the solicitation to the University as a prospective prime contractor clearly is in accord with this statutory requirement.

As to Ideamatics' argument that HUD evaluated its proposal for RFP-14362 in a biased and improper manner, we point out that the determination of the relative merits of a proposal is primarily a matter of administrative discretion, and the fact that a protester disagrees with the agency's evaluation does not render the evaluation unreasonable. Airtronix, Inc., B-217087, Mar. 25, 1985, 85-1 CPD ¶ 345. Moreover, we have held that when improper conduct on the part of government officials is alleged, the protester has the burden of proof, and our Office will not rely on inferences alone to find such misconduct. Davey Compressor Co., B-215028, Nov. 30, 1984, 84-2 CPD ¶ 589.

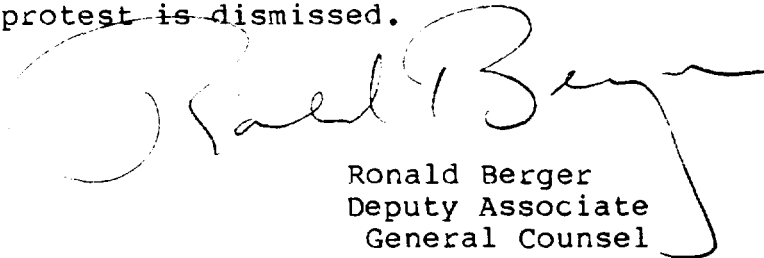
Ideamatics has presented nothing more than its own suspicions--based on its elimination from competition 2 weeks after its proposal was submitted--to support its allegation that the agency is trying to direct the award to the University. Without proof that HUD's decision is based

on anything more than the relative merit of competing proposals, our Office has no basis to question the agency's actions.

As to Ideamatic's last allegation, i.e., that the University is now doing some test work for another HUD contractor, we point out that even if this is so, it involves the administration of an ongoing contract, and our Office does not review such matters under our bid protest function. See, for example, Window Supply Co., B-218043, Jan. 28, 1985, 85-1 CPD ¶ 112.

Since Ideamatics has not stated a valid basis of protest, we dismiss the protest pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(f), without requesting a report from the agency. In view of this dismissal, we also find that the conference Ideamatics has requested would serve no useful purpose. Cushman Electronics, Inc., B-207972, Aug. 5, 1982, 82-2 CPD ¶ 110. Finally, since Ideamatics' protest is without legal merit, its request for proposal preparation costs and attorney's fees is disallowed. E.H. Morrill Co., B-214556, May 3, 1984, 84-1 CPD ¶ 508.

The protest is dismissed.

A large, stylized handwritten signature in black ink, appearing to read "Ronald Berger". The signature is written over the typed name and title.

Ronald Berger
Deputy Associate
General Counsel